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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,259	09/17/2003	Thomas L. Byers	OKC00085	3398

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EXAMINER	
VALENTI, ANDREA M	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/664,259	BYERS, THOMAS L.	
	Examiner	Art Unit	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 May 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,11-13,15-23 and 25-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *22,23 and 31-33* is/are allowed.

6)☒ Claim(s) *1-9,11-13,15-21 and 25-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 18, 19, 21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,551,371 to Markey et al.

Regarding Claim 18, Markey et al teaches a modular animal enclosure with a housing comprising a base portion (Markey #12) and a top portion (Markey #14) attached to the base portion to form a sheltered interior, the housing including a door aperture (Markey #42) to permit ingress of an animal into the interior and a climate conditioning aperture (Markey the aperture in the roof element #14 that is covered by the chimney) to accommodate a flow of atmospheric air between the interior and an external environment (Markey Col. 3 line 8-10); and first means (Markey #152) supported by a top surface of the housing (Markey #152 is supported by the top surface of the housing via the chimney #80) for facilitating the flow of atmospheric air through the climate conditioning aperture.

Regarding Claim 19 and 25, Markey teaches a second means for allowing pivotal movement of the top portion with respect to the base portion (Markey Fig. 5 #40) in alternate, opposing first and second directions (Markey first direction is up to open and

second direction is down to close), and for impeding initiation of the pivotal movement (Markey Fig. 1 #74) in the opposing first and second directions.

Regarding Claims 21, Markey teaches a sensor which detects an ambient condition, and wherein the climate conditioning unit operates in response to the detected ambient condition (Markey Col. 5 line 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-9, 11-13, 15, 16, 26, 27 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,551,371 to Markey et al in view of U.S. Patent No. 2,689,906 to Corbett.

Regarding Claim 1, Markey et al teaches a modular animal enclosure with a housing comprising a base portion (Markey #12) and a top portion (Markey #14) attached to the base portion to form a sheltered interior, the housing including a door aperture (Markey #42) to permit ingress of an animal into the interior and a climate conditioning aperture (Markey the aperture in the roof element #14 that is covered by the chimney) to accommodate a flow of atmospheric air between the interior and an external environment (Markey Col. 3 line 8-10); and a climate conditioning unit (Markey Fig. 7 #152) configured for removable attachment to the housing adjacent the climate conditioning aperture, the climate conditioning unit contactingly supported by a top

surface the housing at a position a selected distance away from the climate conditioning aperture so as to form a gap there between (Markey the climate conditioning unit #152 is supported by the top of the housing via the chimney; the chimney is attached to the top of the housing and is equivalent to applicants #112 and the gap is the distance through the chimney between the actual opening in the roof of the housing and #84) the climate conditioning unit capable of facilitating the flow of atmospheric air through the gap and through the climate conditioning aperture to the interior (Markey Col. 5 line 4-5 and Fig. 6 #90 and #100 inherently air will enter the interior through these apertures when the cover is an open position).

Markey teaches that the chimney is integral with the roof of the housing member and it silent on a fastener inserted through a flange to attach the climate conditioning unit to the housing. However, Corbett teaches a flange with a fastener inserted there through to attach a climate conditioning unit to a housing (Corbett Fig. 1 #33, 11, and 75). It would have been obvious to one of ordinary skill in the art to modify the teachings of Markey with the teachings of Corbett at the time of the invention since the modification is merely making an element separable (i.e. making the chimney detachable from the housing) while performing the same intended function modified as an engineering design choice for ease of compact storage [*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)].

Regarding Claim 2, Markey as modified teaches the climate conditioning unit comprises a cover assembly (Markey #80) comprising a plate member having a cross-sectional area greater than the cross-section area of the climate conditioning aperture,

wherein the plate member is supported by the housing at least at one location adjacent to, and outside of, the climate conditioning aperture (Markey Fig. 7 #80 is adjacent to and outside of the aperture i.e. the opening in the roof of the housing).

Regarding Claim 3, Markey as modified teaches at least the flange projects from the plate member adjacent the top surface of the housing (Corbett #33).

Regarding Claim 4, Markey as modified teaches an insertion depth of the fastener (Corbett #75) into the respective post aperture can be slightly adjusted to alter a cross-sectional thickness of the gap between the cover (Markey #80) assembly and the top cover (#14).

Regarding Claim 5, Markey as modified teaches the climate conditioning unit comprises a cooled air unit which is capable of supplying cooled air to the unit (Markey #150 and #90).

Regarding Claim 6, Markey as modified teaches the climate conditioning unit comprises a fan (Markey Fig. 7 #150) unit, which directs increase velocity ambient air through the climate conditioning aperture.

Regarding Claim 27, Markey as modified teaches interchanging two different climate conditioning units a first climate conditioning unit (Markey Fig. 6) and a second climate conditioning (Markey Fig. 7).

Regarding Claims 7, 8 28, 29, and 30, Markey as modified teaches the importance of providing a heat source to the housing in cold weather, but is silent on the climate conditioning unit comprises a heating unit which supplies heated air to the interior and the climate conditioning unit comprises radiant heat source which directs

radiant heat into the interior. However, Corbett teaches an enclosure with a radiant heat source (Corbett #24). It would have been obvious to one of ordinary skill in the art to modify the teachings of Markey with the teachings of Corbett at the time of the invention to provide comfortable and healthy environmental conditions in colder climates.

Regarding Claim 9, Markey as modified teaches the climate conditioning unit extends through the climate conditioning aperture and into the housing interior (Markey Fig. 7 #150).

Regarding Claim 11, Markey as modified teaches the climate conditioning aperture is substantially rectangular in cross-sectional extent (Markey opening in the roof element #14 that is covered by chimney #80).

Regarding Claim 12, Markey as modified appears to have a climate conditioning aperture with a minimum dimension of at least four inches, but does not explicitly teach this dimension. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Markey at the time of the invention since the modification is merely a change in size to accommodate larger size enclosures that house larger size animals that may require additional air flow/circulation.

Regarding Claim 13, Markey as modified teaches the top portion (Markey #14) is sized to nest within the base portion (Markey #12) when the top is inverted.

Regarding Claim 15, Markey as modified teaches the climate conditioning aperture is centered in the top portion over the sheltered interior of the housing (Markey Fig. 2 #64).

Regarding Claims 16, Markey as modified teaches a sensor which detects an ambient condition, and wherein the climate conditioning unit operates in response to the detected ambient condition (Markey Col. 5 line 7).

Regarding Claim 26, Markey as modified is silent on the fastener extends into a non-through hole in the housing; however, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Markey at the time of the invention for the known advantage of preventing egress means of rain into the shelter.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,551,371 to Markey et al in view of U.S. Patent No. 2,689,906 to Corbett as applied to claim 1 above, and further in view of U.S. Patent No. 5,868,101 to Marshall.

Regarding Claims 17, Markey as modified teaches a temperature sensor, but is silent on a sensor, which detects the presence of the animal within the interior and wherein the climate conditioning unit operates in response to the detected presence of the animal. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Markey at the time of the invention since sensor devices are old and notoriously well-known in any automated system (i.e. lights are on sensors when people enter rooms for energy conservation in office buildings etc). It would have been obvious for one of ordinary skill in the art to be motivated to make this modification for the advantage of energy conversation practice. Marshall teaches an animal detecting sensor in a housing assembly (Marshall claim 15) utilizing a photoelectric sensor. It would have been obvious to one of ordinary skill in the art at the time of the invention to

further modify the teachings of Markey with the teachings of Marshall as means of energy conservation measure.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,551,371 to Markey et al in view of U.S. Patent No. 5,868,101 to Marshall.

Regarding Claims 10, Markey as modified teaches a temperature sensor, but is silent on a sensor, which detects the presence of the animal within the interior and wherein the climate conditioning unit operates in response to the detected presence of the animal. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Markey at the time of the invention since sensor devices are old and notoriously well-known in any automated system (i.e. lights are on sensors when people enter rooms for energy conservation in office buildings etc). It would have been obvious for one of ordinary skill in the art to be motivated to make this modification for the advantage of energy conversation practice. Marshall teaches an animal detecting sensor in a housing assembly (Marshall claim 15) utilizing a photoelectric sensor. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Markey with the teachings of Marshall as means of energy conservation measure.

Allowable Subject Matter

Claims 22, 23, and 31-33 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Cited references U.S. Patent No. 1,032,012; U.S. Patent No. 2,359,716; U.S. Patent No. 411,739; French Patent 2553384; U.S. Patent No. 943,825; U.S. Patent No. 5,257,721; U.S. Patent No. 2,732,972; U.S. Patent No. 4,443,387; U.S. Patent No. 2,689,906; U.S. Patent No. 3,710,761; U.S. Patent No. 2,183,472; U.S. Patent No. 6,637,374; U.S. Patent No. 6,403,922; U.S. Patent No. 5,975,025; U.S. Patent No. 5,809,936; U.S. Patent No. 6,341,579; U.S. Patent No. 2,280,779; U.S. Patent No. 3,048,147; U.S. Patent No. 2,732,826; U.S. Patent No. 3,389,687; United Kingdom Patent GB 214431;. U.S. Patent No. 5,551,371; U.S. Patent No. 2,689,906; U.S. Patent No. 5,868,101 to Marshall teach modular animal enclosures with means to pivotally open the top of the enclosure in relation to the bottom half of the enclosure and to pivotally open with the fulcrum of the hinge on different sides of the enclosure to facilitate opening the enclosure top by pivoting either to the left around the left side wall or pivoting to the right around the right side wall.

However, the prior art of record all fails to show, and fail to make obvious, either alone and/or in combination a modular animal enclosure comprising a base portion and a top portion attached to the base portion to form a housing with a sheltered interior and a door aperture to permit ingress of an animal into said interior, wherein the top portion is configured to be hinged to the base portion to facilitate access to the interior by pivotal movement of the top portion with respect to the base portion in a first direction by at least one hinge pin which projects through respective first hinge apertures in the base portion and in the top portion on a first side of the housing, end. wherein the base portion and top portion further comprise respective second hinge apertures on a second

side of the housing opposite the first side so that the hinge pin can be alternately inserted through the second hinge apertures to facilitate access to the interior by pivotal movement of the top portion with respect to the base portion in a second direction. and wherein the top portion and base portions each further comprise respective flanges which form first and second interference latches on the respectively: first and second sides of the housing so that the first interference latch impedes initiation of said rotation in the second direction and so that the second interference latch impedes initiation of said rotation in the first direction.

The prior art of record all fails to show, and fail to make obvious, either alone and/or in combination modular animal enclosure comprising: a base portion comprising first and second pin apertures and first and second flange portions respectively adjacent the first and second pin apertures; a top portion configured to mate with the base portion to form a housing with a sheltered interior and a door aperture to permit ingress of an animal into said interior, the top portion comprising third and fourth pin apertures and third and fourth flange portions respectively adjacent the third and fourth pin apertures; and a hinge pin configured for insertion through the respective first and third apertures to facilitate rotational movement of the top portion with respect to the base portion in a first direction to facilitate access to the interior, the hinge pin further configured for alternative insertion through the respective second and fourth apertures to facilitate rotational movement of the top portion with respect to the base portion in a second direction opposite the first direction to facilitate access to the interior, wherein the second and fourth flange portions form an interference latch to impede initiation of

said rotation in the first direction when the hinge pin is inserted through the first and third pin apertures, and wherein the first and third flange portions form an interference latch to impede initiation of said rotation in the second direction when the hinge pin is inserted through the second and fourth pin apertures.

Response to Arguments

Applicant's arguments with respect to claims 1-9, 11-13, 15-21, 25-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

French Patent 2553384; U.S. Patent No. 943,825; U.S. Patent No. 5,257,721; U.S. Patent No. 2,732,972.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrea M. Valenti
Patent Examiner
Art Unit 3643

17 August 2005

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

8/18/05